

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

REM SOUTHWEST SERVICES, INC.

Employer

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO, CLC

Petitioner

Case 18-RC-16596

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in connection with this proceeding to me. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit of all full-time and regular part-time employees at the Employer's Montevideo, Minnesota Intermediate Care Facility (ICF). The Employer contends that a single-facility unit including only the ICF is inappropriate because of the relationship between the ICF and its other Chippewa County facilities.

The Employer operates 10 facilities or programs in Chippewa County. The ICF is a residence for developmentally disabled adults, currently housing about 15 clients. It employs a dozen or so "coordinators," who provide round-the-clock service and care. Next door to the ICF, the Employer operates a residence for five elderly clients, REM-Golden. Also in Montevideo, within two miles of the ICF and REM-Golden, the Employer operates two other houses for developmentally disabled adults, REM-Skyview

¹ The Employer, REM Southwest Services, Inc., is a Minnesota corporation engaged in the operation of residential care facilities and adult day services in the State of Minnesota, including facilities located in Chippewa County. During the past 12 months, a representative period, the Employer has earned gross revenues in excess of \$500,000, and it has purchased and received at its Minnesota facilities goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Minnesota.

and REM-Sheridan; another small residence for elderly clients, REM-Rosewood; and a day service facility open from 10 a.m. to 3 p.m. weekdays, Adult Day Services.

In Clara City, 17 miles from Montevideo, the Employer operates two programs: REM-Clara City, a residence for three clients, and REM-Prairieview, which offers services for clients that live in their own homes. Finally, the Employer operates two other programs that provide service and supervision to clients living in their own homes, Chippewa In-Home Services and Chippewa SILS ("semi-independent living services"). There is no evidence as to whether In-Home Services or SILS operate out of a central location or whether the employees thereof work only out of their own homes and the clients' homes.

All of the programs are staffed by coordinators, who are responsible for client care. The level of care depends on the independence of the client. Some need help getting to work or doing their grocery shopping, while some need more intensive care like daily dressing and hygiene services. Some coordinators work overnight shifts in the residences. There are no particular job qualifications or skills required. Starting coordinators are paid \$7.20 to \$7.50 per hour. Each program also employs one program coordinator. The Employer also employs one registered nurse and one maintenance employee who work at all the facilities in the county. The maintenance person also works an overnight shift as a coordinator at the Clara City house.

The ICF is primarily federally regulated and funded, while the rest of the programs are state-directed. That accounts for the difference in starting pay and a

differential that continues throughout employees' tenure. Program Director Carleen Peterson testified that the Employer's care standards are uniform across these jurisdictions, however, exceeding both the federal and state standards. Employees' skills, qualifications, and job duties appear substantially similar regardless of the program in which they work.

Peterson is responsible for overall supervision of the Chippewa County programs. She keeps her office at the Golden house. Social Services Coordinator Renae Chrtt is primarily responsible for developing client plans, the basic care protocol for each client, in consultation with the client, the client's family, state-employed social workers as appropriate, and coordinators. She has her office at the Sheridan residence. The parties stipulated that Peterson and Chrtt are supervisors within the meaning of Section 2(11) of the Act. The Employer declined to stipulate that the program coordinators are statutory supervisors, and Petitioner offered no evidence of its own to support finding them to be supervisors.

The Employer's witnesses testified that the Employer's payroll and benefits administration are centralized under the auspices of a related corporation, which also handles the same functions for other similar REM-affiliated corporations around Minnesota. The Employer offers the same benefits and policies within its employee handbook to all employees in Chippewa County. The only policy that appears to differ at different facilities is whether smoking is allowed, but there is no evidence as to who decides that policy at any particular facility.

Peterson is responsible for all aspects of hiring in the county. She places newspaper advertisements that may describe openings in several different programs or that may not even be site specific. She and Chrtt interview the applicants and make the hiring decisions. There is no evidence of any participation by program coordinators in interviewing or any other aspect of the hiring process. Peterson testified that program coordinators would be involved in disciplining employees, but that any discipline beyond "coaching" the affected employee would require notice to and participation by herself or Chrtt. Program coordinators help Chrtt write evaluations on other employees, but the evaluations play no apparent role in determining pay or other conditions--Peterson testified they are used only for goal measuring.

All the coordinators are required to take continuing education ("in service") training in excess of 2 percent of their annual work hours. They are all required to take CPR and first aid classes, and the Employer offers other courses from which the employees are allowed to pick and choose. Coordinators from any or all the facilities in the county may and do attend the same programs, which the Employer offers at its own facilities, at public buildings like a library, or at a motel conference room. Peterson and Chrtt keep the attendance records and monitor employees' acquisition of their minimum requirements.

Each residence has a monthly grocery budget and a small (\$20.00) petty cash fund from which its employees can make discretionary purchases, with receipts required. Any other expenditures are controlled by Peterson or her superiors. There is no evidence as to

whether program coordinators control the house funds, or whether coordinators are authorized to make grocery and other petty purchases.

The record names 14 employees who currently work as coordinators at the ICF. Three of them work a split schedule including regular hours at the ICF and at another program in the county. Another is the program coordinator for the Adult Day Services program in addition to her coordinator duties at the ICF. Within the past two years, four coordinators primarily employed in other programs have worked temporarily at the ICF, and three ICF coordinators have worked temporarily in other programs. These assignments have been offered on a volunteer basis primarily to cover for temporary staff shortages at various programs.

There is a rebuttable presumption that single-facility units are appropriate in the health care industry. Manor Health Care Corp., 285 NLRB 224 (1987); see Beverly Farm Foundation, 218 NLRB 1275 (1975) (residential facilities for elderly and developmentally disabled are health care institutions). Application of this presumption depends on analysis of centralization of control over operations and labor relations; similarity of skills, functions, and working conditions; employee interchange and contact; geographic proximity; and bargaining history if any.

As stated earlier, Petitioner called no witnesses of its own. The Employer's evidence uniformly undercuts the presumption in favor of single-facility units. All basic policies and benefits are centrally determined and uniform throughout the county. Peterson and Chrtt are responsible for recruiting, hiring, assigning, and disciplining

employees to any extent beyond "coaching." Employees' qualifications, skills, and functions are substantially similar, as evidenced by the conclusory testimony and the fact that some employees regularly work at multiple facilities. Employees have regular contact through in-service training and there is substantial interchange. The facilities depend on each other to cover for temporary staff shortages. The ICF is right next door to REM-Golden, where Peterson maintains her office, although geographic proximity declines from there. There is no bargaining history on a broader basis.

I recognize that the interchange addressed here is voluntary and unquantified in terms of the total number of employees involved and the percentage of work time affected, so in other circumstances the Board might not find the evidence of interchange presented here to significantly undercut the presumption. See New Britain Transp. Co., 330 NLRB No. 57, slip op. at 2 (Dec. 30, 1999). In this case, however, I find no countervailing evidence suggesting autonomy at the facility level. Petitioner contended at the hearing and in its briefs that program coordinators are supervisors within the meaning of the Act, an issue upon which it assumes the burden of proof. Yet it offered no evidence to support the claim. The Employer has the burden of overcoming the single-facility presumption, but under the circumstances, the lack of evidence regarding scheduling, daily assignments and directions, and grievance processing, and the lack of details regarding disciplinary authority, is not solely the Employer's problem. Without some evidence of facility-level autonomy, the single-facility presumption alone is insufficient to find appropriate the petitioned-for unit. Because Petitioner stated at the

hearing that it is not interested in proceeding in any unit broader than the ICF, I will therefore dismiss the petition.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it is, dismissed.²

Dated at Minneapolis, Minnesota, this 25th day of January, 2000.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

Index # 440-3350-0100

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **February 8, 2000**.